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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 05 2010
LIN-07-211-51516

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry concerning your case must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a mortgage lender. It seeks to employ the beneficiary permanently in the United States as a human resource manager. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor. The director determined that the labor certification submitted does not support the requested classification as a member of the professions holding an advanced degree and denied the petition accordingly.

The record shows that the appeal is properly and timely filed, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

During the adjudication of the appeal, evidence came to light that the petitioner in this matter had been dissolved. Therefore, on March 16, 2010, this office sent the petitioner a notice of derogatory information regarding this finding in which it informed the petitioner that if it was indeed no longer an active business, the petition and its appeal to the AAO would have become moot.[1] In which case, the AAO would dismiss the instant appeal as moot. The notice afforded the petitioner 30 days to respond and to overcome the ground of eligibility.

The notice sent to the petitioner was returned as undeliverable. However, the AAO received a response from counsel on April 14, 2010. In the response, counsel confirms that the petitioner closed its business operations at the end of 2008. As such, this office finds, in keeping with the attached record from the California Business Portal official website, that the petitioner's status has been dissolved, and thus, the petitioner no longer qualifies as a United States employer capable of making a valid job offer. Therefore, further pursuit of the instant petition is moot.

In response to the AAO's notice of derogatory information, counsel submits the beneficiary's W-2 forms and paystubs and asserts that these documents prove that the petitioner entity had a *bona fide* offer of employment for the beneficiary from the labor certification stage until after the subject I-140 petition was filed and elevated on appeal to the AAO. Counsel's assertion is misplaced. The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. Here, the priority date is April 5, 2007 and the instant petition is currently pending with the AAO. Therefore, the petitioner must establish that its job offer to the beneficiary was a *bona fide* one in 2007 and that the offer has bee remaining bona fide until the present. The petitioner failed to establish the bona fide of its

[1] Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot.

job offer from the priority date to the present because the petitioner was dissolved and no longer qualified as a United States employer capable of making a valid job offer in 2008.

Furthermore, the petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, U.S. Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). The beneficiary's W-2 forms in the record show that the petitioner paid the beneficiary $13,898.02 in 2005, $38,645.38 in 2006 and $26,129.53 in 2007, 18% to 50% of the proffered wage ($77,313.60 per year) as set forth on the ETA Form 9089 for the proffered position in this case, especially in the year of the priority date the petitioner only paid one third of the proffered wage 33%. The record does not contain regulatory-prescribed evidence, such as annual reports, tax returns or audited financial statements, showing that the petitioner had sufficient net income or net current assets in any year from the priority date to the present. The petitioner failed to establish continuing ability to pay the proffered wage, and thus, failed to establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence.

**ORDER:** The appeal is dismissed as moot based on the finding that the petitioner was dissolved.